

IN THE MATTER OF : BEFORE THE
KELVIN SMITH : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 06-033V

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DECISION AND ORDER

On October 24, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Kelvin Smith, Petitioner, for a variance to reduce the 25-foot rear setback to 9 feet for a sunroom and deck to be located in an R-ED (Residential – Environmental Development) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Kelvin Smith and Kirk Montague testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 2225 Kaitlins Court, is located in the 2nd Election District at the terminus of Kaitlins Court about 500 feet northeast of Oak Forest Drive in the

Hollifield Estates Section I subdivision in Ellicott City (the “Property”). The Property is identified on Tax Map 18, Grid 2 as Parcel 1, Lot 39.

The Property is a trapezoidal-shaped lot consisting of about 8,127 square feet, or 0.19 acres. The lot has about 47.63 feet of frontage on Kaitlins Court and widens to about 138.54 feet at the rear lot line. The Property is about 114.31 feet deep along its west side and 90.28 feet deep along its east side.

The Property is improved with a two-story residential dwelling that faces Kaitlins Court and is located 22 feet from the road frontage, 10 feet from the west side lot line, 25 feet from the rear lot line, and 8 feet from the east side lot line. The house is about 37 feet deep and 56 feet wide.

The house is accessed from a paved driveway from Kaitlins Court to a front-loading two-car attached garage at the west side of the front of the house. The back yard of the lot slopes severely down to the north to a wooded area.

2. The Petitioner, the owner of the Property, requests a variance for a deck and sunroom to be constructed onto the rear of the home. The deck will be 38 feet wide and 16 feet deep. The sunroom will be constructed on top of the deck and will be 18 feet wide and 12 feet deep with materials to match the existing house. The combined deck and sunroom will therefore be located 9 feet from the rear lot line and encroach 16 feet into the 25-foot rear setback required by Section 107.D.4.d(1)(c).

3. Vicinal properties are also zoned R-ED and are part of the Hollifield Estates Section I subdivision. The subdivision plat identified by the Petitioner (Exhibit 1) indicates that the

Property is one of the shallowest and smallest properties in the subdivision. The size of the Petitioner's home is typical of many in the neighborhood. The lot to the north of the Property is an open space lot, and beyond that is the Patapsco Valley State Park.

4. Mrs. Smith testified that the deck will be about 10 feet above ground level. He stated that many other homes in the area have similar decks and sunrooms. Mr. Montague, the Petitioner's contractor, testified that the dimensions of the deck and sunroom are proportional to the house and are the norm for the neighborhood.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if

granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is smaller and shallower than most other properties in the neighborhood. In fact, the existing home, which is typical in size, barely fits within the Property’s building envelope. A deck and sunroom are common and reasonable additions for a residential use in this community. In order to construct a deck and sunroom, however, due to the small size and shallowness of the buildable area of the lot, it is necessary to encroach into the rear setback. Consequently, I find that the size and shallowness of the Property are unique physical conditions that cause the Petitioner

practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The deck and sunroom will be used for permitted residential purposes and will not change the nature or intensity of the use. The lot to the rear of the Property is a wooded open space lot adjacent to state parkland. The deck and sunroom will be well separated and buffered from adjoining properties and the public road right-of-way. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size and shallowness of the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed 16' by 38' deck is the modest in size given the size of the homes and lots in the neighborhood and will be located in the only area practical due to the size and shape of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **21st day of November 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Kelvin Smith for a variance to reduce the 25-foot rear setback to 9 feet for a sunroom and deck to be located in an R-ED (Residential – Environmental Development) Zoning District is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Lapse of Variance: This variance will become void unless the required permits conforming to the variance plan are obtained within two years and substantial construction in accordance therewith is completed within three years from the date hereof. If the variance is granted to allow recording of a final plat, the variance will become void unless the plat is recorded in the Land Records of Howard County within three years from the date hereof. See Section 130.B.2.e.